

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ODESSA H. MECHELL and DEPARTMENT OF AGRICULTURE, FOOD  
SAFETY INSPECTION SERVICE, MEAT POULTRY INSPECTION PROGRAM,  
Dallas, Tex.

*Docket No. 96-2275; Submitted on the Record;  
Issued May 21, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in reducing appellant's compensation benefits based upon her wage-earning capacity as a security guard.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof in reducing appellant's compensation benefits.

On October 10, 1994 appellant, then a 62-year-old food inspector, filed an occupational disease claim alleging that she sustained an injury to her right index finger and left thumb which she attributed to her job duties. The Office subsequently accepted that appellant sustained right carpal tunnel syndrome and aggravation of arthritis in the right index finger due to her employment.

Appellant was placed on the periodic compensation rolls to received compensation benefits for temporary total disability effective January 11, 1995.

A functional capacity assessment dated August 9, 1995, performed for Dr. David D. Sanderson, a Board-certified orthopedic surgeon, indicated that appellant could perform sedentary work, which was defined as lifting up to 10 pounds on an occasional basis and upper extremity tasks self-paced on an occasional to frequent basis.

In a report dated August 28, 1995, Dr. Sanderson indicated that appellant could return to work on September 5, 1995 with the permanent restrictions of no repetitive lifting, turning, or twisting with either hand.

On January 16, 1996 Bill Weber, a vocational rehabilitation counselor, provided copies of job descriptions for positions which contained Dr. Sanderson's signature, indicating these positions were suitable for appellant's work restrictions. These job descriptions, obtained from

the Department of Labor's *Dictionary of Occupational Titles*, included the positions of gate guard, security guard and school crossing guard. The physical demands for the security guard position were provided.

By letter dated February 21, 1996, a vocational rehabilitation counselor advised appellant that the Texas Employment Commission had four openings for security guards in a pay range of \$4.80 to \$5.50 per hour with no experience required.

In a report dated April 15, 1996, a vocational rehabilitation counselor stated that appellant had been advised of a security guard position, which was available through the Texas Employment Commission but that she had maintained that she was not able to work despite her physician's release. The counselor stated that the position of security guard was performed in sufficient numbers within the commuting distance of appellant's home to be considered reasonably available and that the pay rate was \$203.20 per week.

By letter dated April 30, 1996, the Office advised appellant that it proposed to reduce her compensation benefits for wage loss on the grounds that the medical and factual evidence of record established that she was longer totally disabled and had the capacity to earn wages as a security guard at the rate of \$203.20 per week. Appellant was advised to submit additional evidence within 30 days if she disagreed with the proposed reduction in benefits.

In a report dated May 22, 1996, Dr. Sanderson noted that appellant was having swelling, pain and stiffness in the fingers of both hands, which made it difficult for her to lift or move anything and that she was having difficulty driving because this caused increased pain and stiffness in her fingers. He stated that appellant could not perform a job which required driving.

By decision dated June 3, 1996, the Office reduced appellant's compensation benefits effective June 23, 1996 for the reason that the weight of the evidence of record established that the position of security guard was suitable, both medically and vocationally and reflected appellant's wage-earning capacity.

In an undated letter received by the Office on June 10, 1996 appellant requested reconsideration of the Office's decisions reducing her compensation benefits and indicated that she would fear for her safety if she worked as a security guard alone at night, that her medication made her sleepy and that her physician had stated that she was unable to drive.

By decision dated June 24, 1996, the Office denied appellant's request for further merit review of her case.

The Board finds that the Office met its burden of proof in reducing appellant's compensation benefits to reflect her wage-earning capacity as a security guard.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>1</sup>

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<sup>1</sup> *Bettye F. Wade*, 37 ECAB 556 (1986); *Ella Garner*, 36 ECAB 238 (1984).

Under section 8115(a) of the Federal Employees' Compensation Act,<sup>2</sup> wage-earning capacity is determined by the actual wages received by an employee if the earnings fairly and reasonably represent her wage-earning capacity. If the actual earnings do not fairly and reasonably represent wage-earning capacity, or the employee has no actual earnings, her wage-earning capacity is determined with due regard to the nature of her injury, the degree of physical impairment, her usual employment, her age, her qualifications for other employment, the availability of suitable employment and other factors or circumstances which may affect her wage-earning capacity in her disabled condition.<sup>3</sup>

In the instant case, the security guard position was selected by appellant's vocational rehabilitation counselor and the Office properly relied on the opinion of appellant's counselor in determining that appellant is vocationally and educationally capable of performing the selected position.<sup>4</sup> The vocational rehabilitation counselor also determined that the position was reasonably available within commuting distance of appellant's home.<sup>5</sup>

In determining that appellant is physically capable of performing the security guard position, the Office properly relied on the opinion of Dr. Sanderson, appellant's attending Board-certified orthopedic surgeon, who signed the security guard job description, indicating that appellant was physically capable of performing the duties of that position.

For these reasons, the Office has met its burden of proof in reducing appellant's compensation benefits based upon her wage-earning capacity as a security guard.

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<sup>2</sup> 5 U.S.C. § 8115(a).

<sup>3</sup> *Pope D. Cox*, 39 ECAB 143 (1988); *see* 5 U.S.C. § 8115(a).

<sup>4</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.8(b) (December 1993).

<sup>5</sup> *Id.* at 2.814.8(c).

The June 3 and 24, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.  
May 21, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member